

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

Plaintiff

DECISION and ORDER

-VS-

13-CR-6118

LUIS GUZMAN

Defendant

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This case was referred by text order of the undersigned, entered August 13, 2013, ECF No. 21, to Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636(b)(1)(A)-(B). On October 10, 2013, Defendant filed an omnibus motion, ECF No. 26, seeking *inter alia* suppression of suppression of statements and suppression of photographic identification. On November 22, 2013, a hearing on Defendant's applications to suppress was held before Magistrate Judge Payson. ECF No. 30, and a transcript of the proceeding was filed on January 29, 2014, ECF No. 31. On November 17, 2014, Magistrate Judge Payson filed a Report and Recommendation ("R&R"), ECF No. 42, recommending that Defendant's motion to suppress statements and his motion to suppress photographic identification be denied. On January 6, 2015, Defendant filed objections to the R&R, maintaining that the photo array employed by Investigator Bernabei was itself unduly suggestive and that the government "failed to establish . . . whether the array had been previously used by an officer with the same confidential informant, which could add to the suggestiveness of the array and the procedure." Defendant's Objections to the Report and Recommendation, p. 3. As to the issue of statements, Defendant objects to Judge Payson's R&R arguing that such statements must be suppressed because they were the fruit of an illegal entry into his residence. Additionally,

he maintains that the government failed to establish that, prior to making such statements, he knowingly and intelligently waived his Miranda warnings or that such statements were voluntary.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the R&R to which objections have been made. Upon a *de novo* review of the R&R, including the transcript of the evidentiary hearing held and exhibits received, Court accepts Magistrate Judge Payson's proposed findings and recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Payson's R&R, ECF No. 42, defendant's applications, ECF No. 26, to suppress photographic identification (and concomitantly any in court identification), as well as his application to suppress statements are denied.

IT IS SO ORDERED.

Dated: Rochester, New York  
February 24, 2015

ENTER:

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge